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HONORABLE BARBARA J. ROTHSTEIN

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JUL 09 2002

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY _____ DEPUTY

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION.

This document relates to all actions.

MDL Docket No. 1407

AMENDED CASE MANAGEMENT
ORDER NO. 8,
ESTABLISHING PLAINTIFFS'
LITIGATION EXPENSE FUND
TO COMPENSATE AND
REIMBURSE ATTORNEYS FOR
SERVICES PERFORMED AND
EXPENSES INCURRED FOR
COMMON BENEFIT [PROPOSED]

AND NOW, THIS 8th DAY OF July, 2002, it is hereby
ORDERED, ADJUDGED AND DECREED that:

A. Set Aside for Counsel Fees and Costs in MDL 1407

1. The Court finds that this litigation has advanced to the point that it is appropriate to establish a fair system for the sequestration of a certain percentage of all payments by defendant(s) to plaintiff(s) in fulfillment of obligations to settle claims of plaintiffs from time to time as well as to satisfy judgments that may result in some

AMENDED CASE MANAGEMENT ORDER NO. 8,
ESTABLISHING PLAINTIFFS' LITIGATION
EXPENSE FUND (MDL Docket No. 1407) – Page 1

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PACIFIC BUILDING
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(206) 624-8844
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ORIGINAL

WAS

cc: Counsel, BJR, Financial

1 instances (all such payments hereinafter referred to as "claim payments"). The funds so
2 sequestered are to be available to provide for reimbursement of costs and payment of
3 attorneys' fees to the Plaintiffs' Steering Committee ("PSC") and other attorneys who
4 have been authorized by the PSC, pursuant to the Court's "Order Appointing Members
5 to Plaintiffs' and Joint Committees" (entered Jan. 17, 2002), to perform work for the
6 benefit of plaintiffs in MDL 1407 and any state-court counsel that agrees to be
7 coordinated hereunder (hereinafter the "Common Benefit Attorneys"), subject to a
8 proper showing in the future.

11 2. Before making any claim payment to a plaintiff whose action has been
12 subject to coordinated pretrial proceedings in MDL 1407, defendants shall deduct from
13 such payments an amount equal to four (4) percent for the federal court recoveries and
14 three (3) percent for the state court coordinating case recoveries of the aggregate of the
15 amount being paid and any amounts to be paid to the plaintiff in the future; and shall
16 pay such sum as hereinafter provided for deposit into the MDL 1407 Fee and Cost
17 Account. In measuring the gross amount due or to become due to any plaintiff as such
18 claim payments, the defendant shall include the present value of any fixed and certain
19 payments to be made in the future.

21 3. The requirements of paragraph 2 shall apply regardless of whether a
22 plaintiff's case is disposed of during the time it is on the docket of the transferee court,
23 or following remand or transfer from the transferee court to another federal district court
24 for trial, or transfer to other district courts in accordance with 28 U.S.C. § 1404 or other
25 provisions of law. The obligation shall follow the case to its final disposition in any
26 United States court, including a court having jurisdiction in bankruptcy.

1
2 4. As a condition of appointment made by this Court of any counsel to any
3 committee, counsel deemed to have agreed to the terms of paragraph 2 for all said
4 counsel retaining any recovery in both federal and state forums, however, recoveries in
5 federal forums shall be subject to a four (4) percent assessment and recoveries in state
6 forums (or unfilled cases that result in a recovery) shall only be subject to a three (3)
7 percent assessment.

8
9 5. State Court counsel who wish to obtain the PSC's proprietary attorney
10 work product described herein shall voluntarily agree to the terms of this Order upon
11 execution of the express written agreement attached hereto as "Exhibit 1". 1 No State
12 Court litigant will be subject to a tax, fee, assessment or other charge imposed by this
13 Court except upon execution of an express written agreement with the PSC to share the
14 PSC's proprietary attorney work product. For the purposes of this Order, "proprietary
15 attorney work product" of the PSC shall not include fact depositions taken in these MDL
16 proceedings, transcripts and videotapes thereof and/or exhibits thereto, and shall not
17 include any documents produced in PPA litigation by any party or by any non-party
18 pursuant to any Notice of Subpoena served in these MDL proceedings.

19
20 Accordingly, no tax, fee, assessment or other charge will be imposed on
21 any State Court litigant by virtue of attending and participating in fact depositions
22 conducted in this MDL proceedings, and/or use by any party of transcripts, videotapes
23 and/or exhibits from such depositions or documents produced in the PPA MDL litigation
24 in a State Court Case. Before making any claim payment to a state court plaintiff who
25

26
27 1 The proposed Agreement for state court attorneys who voluntarily agree to
28 the use of the MDL work product is attached hereto as "Exhibit 1".

1 has voluntarily agreed to coordinate by accepting the terms of this CMO, defendants
2 shall withhold from such payments an amount equal to three (3) percent of the
3 aggregate of the amount being paid and any amounts to be paid in the future; and shall
4 pay such sum as herewith provided for deposit into the MDL 1407 fee and cost account.
5

6 The PSC and each defendant subject to this Order shall promptly notify defendant's
7 liaison counsel of any state court attorney who they have reason to believe is a
8 Common Benefit Attorney.
9

10 6. Defendants shall have primary responsibility for withholding the four
11 percent (4%) and three percent (3%) set-off of the claim payments and tendering such
12 sums to the MDL 1407 Fee and Cost Account. If, however, a defendant fails to do so,
13 in addition to the Court's power generally, including the exercise of its powers to compel
14 payment by defendant in compliance with this Order, the Court, under appropriate
15 circumstances, can be expected to seek such payment from the plaintiff and/or his or
16 her counsel under terms that are just and equitable.
17

18 7. The Court shall cause the Defendants to deposit the set-off payments, as
19 provided in this Order, into the Registry of this District Court in an interest-bearing
20 account. All funds in the account will be held as funds subject to the direction of the
21 Court.
22

23 8. The Defendants' Co-Lead Counsel shall maintain detailed records which
24 identify the plaintiffs and plaintiffs' counsel's names, current address and telephone
25 numbers, civil actions or other identifying number, amount of deposit, date of deposit,
26 identification of the parties contributing to the amount deposited (and any allocation if
27 more than one contribution is being made), and other information that may be required
28

1 by the circumstances. All such records shall be maintained as highly confidential
2 material and the only persons with access to such records shall be the Court and
3 Defendants' Co-Lead Counsel. Plaintiffs' Co-Lead Counsel shall have access to the
4 information limited only to the total amount of funds in the account, but not to the
5 particularized information as to individual plaintiffs or individual dollar amounts.
6

7 9. Each party who is in any way affected by the creation of an obligation to
8 make a claim payment is jointly and severally liable for promptly reporting to the
9 Registry of this District Court and the PSC the terms of any settlement or judgment that
10 may be subject to this Order as well as the information described in paragraph 8 so the
11 Court and Co-Lead Counsel can monitor compliance with this Order.
12

13 10. Upon a proper showing, the Common Benefit Attorneys will be entitled to
14 receive an award of counsel fees and reimbursement of out-of-pocket litigation
15 expenses to be paid from the MDL 1407 Fee and Cost Account in such amounts as are
16 determined by the Court, after a hearing, based on the appropriate and controlling law.
17 In making such an award, the Court will first determine the amount of costs for which
18 reimbursement is appropriate. The amount remaining in the MDL 1407 Fee and Cost
19 Account after deducting the amount of costs awarded by the Court will be available for
20 any award of counsel fees. In making an award of counsel fees to the Common Benefit
21 Attorneys and in apportioning any fee award among those attorneys, appropriate
22 consideration will be given to the experience, talent, and contribution made by each
23 Common Benefit Attorney who seeks to recover counsel fees from the MDL 1407 Fee
24 and Cost Account, provided, however, that the Court will only consider compensation
25 for those services which were authorized by the PSC.
26
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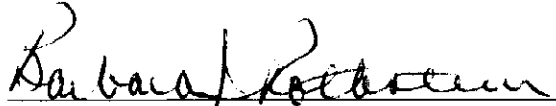
1
2 11. Any sum ordered to be paid by the Court pursuant to this Order as an
3 award of counsel fees shall be deducted from the gross recovery that any plaintiff would
4 have been entitled to receive. Any sum ordered to be paid by the Court pursuant to this
5 Order as reimbursement for out-of-pocket costs shall be prorated among the plaintiffs
6 whose claim payments were deposited, in part, in the MDL 1407 Fee and Cost Account.

7 12. Nothing in this Order will limit the amount of attorneys' fees and costs, in
8 the form of a percentage award or otherwise, which may be awarded by the Court in the
9 event of recovery in any action certified as a class action under *Fed.R.Civ.P.* 23.

10 13. The Court is not making the determination by this Order that the Common
11 Benefit Attorneys shall receive any specific sum as payment of counsel fees and
12 reimbursement of litigation expenses. Such a determination is specifically reserved for
13 an appropriate time following petitions related to such an award. Rather, this Order is
14 merely intending to develop a mechanism for the creation of a fund from which the
15 amount of fees and costs which the Common Benefit Attorneys are ultimately entitled
16 may be awarded and paid with reliability.

17 14. At such time as the MDL 1407 Fee and Cost Account contains balances
18 that are not necessary to be retained for the payment of fees and costs, the Court will,
19 upon applicable provisions of law, following a hearing, make refunds on an equitable
20 basis, or if such balances are of small amounts, enter such orders concerning the
21 disposition of such funds as are appropriate under the law.

SO ORDERED this 8th day of July, 2002.


Honorable Barbara Jacobs Rothstein
United States District Judge

Presented by:

Levinson Friedman, P.S.

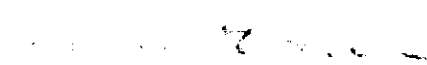
By 
Lance E. Palmer
WSBA #18141
Plaintiffs' Liaison Counsel

Exhibit 1

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION.

MDL Docket No. 1407

AGREEMENT BETWEEN PSC
AND STATE COURT ATTORNEY

This document relates to all actions.

AGREEMENT

This Agreement is made this _____ day of _____, 2002, by and
between the Plaintiffs' Steering Committee ("PSC") appointed by the United States
District Court for the Western District of Washington in MDL Docket No. 1407 and
[FILL IN THE NAME OF THE FIRM EXECUTING THE AGREEMENT] (hereinafter "the
State Attorneys").

WHEREAS the United States District Court for the Western District of
Washington has appointed Counsel to serve as members of the PSC to facilitate the
conduct of pretrial proceedings in the federal actions relating to the ingestion of PPA;
and

1
2 WHEREAS the PSC in association with other attorneys working for the common
3 benefit of plaintiffs have developed or are in the process of developing work product
4 which will be valuable in the litigation of state court proceedings involving PPA induced
5 injuries, including:

- 6 a. CD-ROMs and a virtual depository containing images of the key
7 documents selected by the PSC from the document productions of
8 the defendants and third-parties in MDL 1407;
9 b. a bibliographic database providing a "coded" index of such key
10 documents;
11 c. the depositions of each generally applicable fact witness taken in
12 MDL 1407 and in any coordinated state-court actions in the form of
13 paper transcripts, text searchable computer disks and CD-ROMs
14 and videotapes of videotaped depositions; and
15 d. time-lines, casts of characters, and other work product relating to
16 the facts at issue in MDL 1407;

17 which will collectively be referred to as the "PSC Work Product"; and

18 WHEREAS the State Attorneys are desirous of acquiring the PSC Work Product
19 and establishing an amicable working relationship with the PSC for the mutual benefit of
20 their clients;

21 NOW, THEREFORE, in consideration of the covenants and promises contained
22 herein, and intending to be legally bound hereby, the parties agree as follows:

23 1. With respect to each client who they represent in connection with a PPA
24 related claim, other than clients with claims filed or pending in any federal court, each of
25 the State Attorneys shall deposit or cause to be deposited in an MDL 1407 Fee and
26 Cost Account established by the District Court in the MDL three (3) percent of the gross
27 amount recovered by each such client. For purposes of this Agreement, the gross
28

1 amount of recovery shall include the present value of any fixed and certain payments to
2 be made to the plaintiff or claimant in the future.

3
4 2. The State Attorneys, on behalf of themselves, their affiliated counsel, and
5 their clients, hereby grant and convey to the PSC a lien upon and/or a security interest
6 in any recovery by any client who they represent in connection with any PPA induced
7 injury, to the full extent permitted by law, in order to secure payment in accordance with
8 the provisions of paragraph 1 of this Agreement. The State Attorneys will undertake all
9 actions and execute all documents which are reasonably necessary to effectuate and/or
10 perfect this lien and/or security interest.

11
12 3. This Agreement shall apply to each and every claim or action arising from
13 the ingestion of PPA in which the State Attorneys have a right to a fee recovery.

14
15
16 PLAINTIFFS' STEERING COMMITTEE

17
18 *Levinson Friedman, P.S.*

19
20
21 Lance E. Palmer
22 WSBA #18141
23 **Plaintiffs' Liaison Counsel**

24
25
26 [State Court Attorney]

THE HONORABLE BARBARA JACOBS ROTHSTEIN

ENTERED

RECEIVED

2002 JUN

CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY LITIGATION

MDL NO. 1407

CERTIFICATE OF SERVICE

I, Kaj Trapp, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

I am a citizen of the United States and a resident of King County, Washington. I am over the age of 18 years and am not a party to the within cause. My business mailing address is that of Levinson Friedman, P.S., Pacific Building, 720 Third Avenue, Suite 1800, Seattle, WA 98104.

On July 3, 2002, I caused true and correct copies of the following documents:

1. AMENDED CASE MANAGEMENT ORDER NO. 8, ESTABLISHING PLAINTIFFS' LITIGATION EXPENSE FUND TO COMPENSATE AND REIMBURSE ATTORNEYS FOR SERVICES PERFORMED AND EXPENSES INCURRED FOR COMMON BENEFIT

to be served by electronic-mail upon the following parties:

CERTIFICATE OF SERVICE
(MDL NO. 1407) - Page 1

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ORIGINAL

See Exhibit A

And to be served by ABC Legal Messengers, Inc. by hand delivery, and by electronic mail upon the following counsel of record:

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Executed on July 3, 2002, at Seattle, Washington.

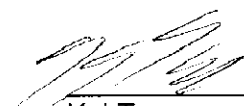

Kaj Trapp

Exhibit A

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